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of Minorities
Forty-second session
Item 13 of the provisional agenda

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

RESPECT FOR THE RIGHT TO LIFE: ELIMINATION OF CHEMICAL WEAPONS

Report of the Secretary-General prepared in accordance with Sub-Commission resolution 1989/39

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INTRODUCTION

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its fortieth session, adopted resolution 1988/27 of 1 September 1988 entitled "Respect for the right to life: elimination of chemical weapons". In that resolution, the Sub-Commission stated that it was deeply shocked and saddened by the destruction of human life, life-long disabilities and great suffering caused by chemical weapons, and referred to the necessity for the international community to take urgent and effective measures to prevent the future use of chemical weapons in violation of international law in order to protect human life.

2. In paragraph 4 (a) of that resolution, the Sub-Commission requested the Secretary-General to collect information, on the basis of relevant and reliable sources, on the use of chemical weapons, and on the danger they represent to life, physical security and other human rights. In paragraph 4 (b), the Sub-Commission also requested the Secretary-General to present a report on the information received to the Sub-Commission at its forty-first session, together with any recommendations and views which he might receive on effective ways and means of eliminating chemical weapons. The report on this issue (E/CN.4/Sub.2/1989/4) was submitted to and considered by the Sub-Commission at its forty-first session.

3. At that session, the Sub-Commission adopted resolution 1989/39 of 1 September 1989 entitled "Respect for the right to life: elimination of chemical weapons". In paragraph 3 of that resolution, the Sub-Commission decided to give further consideration to this matter, at its forty-second session, on the basis of any further information which might be contained in reports by the Secretary-General to the United Nations bodies, or submitted by Governments or non-governmental organizations in consultative status.

4. In a note verbale dated 4 December 1989, the Secretary-General invited the Governments of all States to submit any further information on the subject. Appropriate letters of the same date were also sent to the United Nations bodies and non-governmental organizations in consultative status.

5. On 30 April 1990, substantive information had been received from the Governments of the Byelorussian Soviet Socialist Republic, Colombia, Cuba, the Dominican Republic, Egypt, the Philippines, Poland, Qatar, Turkey and Venezuela.

6. Substantive information had also been received from the Under-Secretary-General for Political and Security Council Affairs and the Department for Disarmament Affairs.

7. The following non-governmental organizations submitted information: International Committee of the Red Cross, International Council of Environmental Law and International Institute of Humanitarian Law.

8. The information received is reproduced in sections I-III of the present report. Any further information will be submitted in addenda to the report.

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I. REPLIES FROM THE UNITED NATIONS BODIES

1. Under-Secretary-General for Political and Security Council Affairs

[Original: English]
[30 January 1990]

1. The Under-Secretary-General for Political and Security Council Affairs submitted three reports 1/ published within the past year, relating to dangers posed by the use of chemical and bacteriological weapons:

(a) Report of the Conference on Disarmament on its 1989 session (A/44/27); 2/

(b) Letter dated 19 January 1989 from the Permanent Representative of France to the United Nations addressed to the Secretary-General containing the final declaration of the Conference of States parties to the 1925 Geneva Protocol and other Interested States on the prohibition of chemical weapons, Paris, 7-11 January 1989 (A/44/88);

(c) Chemical and Bacteriological (Biological) Weapons. Report of the Secretary-General (A/44/561). 3/

2. He also enclosed, for ease of reference, the most recent resolutions on this topic adopted at the forty-fourth session of the General Assembly (resolutions 44/115 A, B, and C of 15 December 1989) and the December 1989 issue of the United Nations Chronicle; the latter contains a two-page summary relating to progress on a chemical weapons ban at the Conference on Disarmament.

2. Department for Disarmament Affairs

[Original: English]
[18 April 1990]

The Department for Disarmament Affairs enclosed four documents 4/ which fell within the purview of its activities. Considered relevant for the purpose stipulated in resolution 1989/39, they were particularly recommended because they gave further consideration to the subject-matter:

(a) Report of the First Committee on chemical and bacteriological (biological) weapons (A/44/784). 5/

(b) Chemical and Bacteriological (Biological) Weapons. Report of the Secretary-General (A/44/561 and Add.1 and 2). 6/ The Department for Disarmament Affairs highlighted this report because it contained proposals of a group of qualified experts concerning technical guidelines and procedures to guide the Secretary-General in the conduct of timely and efficient investigation of a report of alleged use of chemial and bacteriological (biological) or toxin weapons.

(c) Letters dated 16 and 17 October 1989 from the Permanent Representative of Australia to the United Nations addressed to the Secretary-General (A/C.1/44/4 and A/C.1/44/5) concerning the outcome of a Government-Industry Conference against Chemical Weapons (18-22 September 1985) and of a Chemical Weapons Regional Seminar (2-4 August 1989).

(d) Letter dated 25 September 1989 from the Minister for Foreign Affairs of the USSR and the Secretary of State of the United States addressed to the Secretary-General (A/C.1/44/2) transmitting the text of the joint United States-Soviet statement on chemical weapons of 23 September 1989.

II. REPLIES FROM GOVERNMENTS

1. Byelorussian Soviet Socialist Republic

[Original: Russian]
[27 February 1990]

1. The Byelorussian SSR shares the purposes and principles set forth in resolution 1989/39 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

2. The Byelorussian SSR actively and invariably advocates the complete prohibition of chemical weapons as one of the most barbaric types of weapons of mass destruction. The Byelorussian SSR is one of the initiators of the consideration in the United Nations of the need for prohibiting them. It is convinced that the objective of prohibition would most appropriately be served by the adoption of a convention on the prohibition of the development, production and stockpiling of chemical weapons and their complete destruction. The Byelorussian SSR calls for the completion, within the shortest possible time, of the negotiations on the drafting of such a convention now under way at Geneva in the United Nations Conference on Disarmament. At the forty-fourth session of the United Nations General Assembly, the Byelorussian SSR supported resolution 44/115 A and 44/115 B on the prohibition of chemical weapons and their use. The Byelorussian SSR proceeds from the assumption that the convention being prepared should have a universal character and considers absolutely unacceptable, both morally and from the point of view of international law, any use whatever of chemical weapons.

3. In the opinion of the Byelorussian SSR, no action should be taken at this time that might be harmful to the negotiations being conducted for the purpose of preparing a convention on the prohibition of chemical weapons. A Soviet-American moratorium of the production of chemical weapons might help to create maximum favourable conditions for the current final stage of the negotiations. As is known, the Soviet Union has unilaterally stopped producing chemical weapons. It is also necessary to take steps to prevent the spread of chemical weapons.

4. The Byelorussian SSR is a party to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction, observes all of its provisions and participates in the system of information exchange relating to the implementation of that agreement. In co-operation with other States, the Byelorussian SSR will continue to make every effort for the swift and effective prohibition of chemical weapons.

2. Colombia

[Original: Spanish only]
[16 March 1990]

1. First of all, we wish to state that Colombia does not produce, stockpile or use chemical weapons and, although not a party to the 1925 Geneva Protocol, it has added its voice to that of the countries which demand their prohibition. During the Conference of the State parties to the 1925 Geneva Protocol and of other States, the delegation of Colombia recognized that the Protocol had represented a significant step but pointed out that, despite its importance, it did not offer a complete solution to the problem, and that is why the delegation expressed its support for the efforts being made in the multilateral field to conclude a convention that prohibits not only the use but also the development, production, stockpiling and processing of chemical weapons.

2. What is more, in view of the alarming proliferation of such weapons, Colombia has called for ensuring the commitment of all States and the responsibility to be borne by the manufacturers of chemicals, dealers, possessors of know-how and owners of plants and equipment. For Colombia, the use of chemical weapons as a means of mass destruction constitutes an appalling violation of the right to life and of the norms of humanitarian law. If employed, chemical weapons erase the difference between military and civilian targets, and destroy the fundamental protection which the law of nations grants to civilian populations, according to which nations at peace must offer one another maximum co-operation and nations at war must inflict on one another the least possible damage.

3. The effects of these weapons on the environment entail serious dangers for present and future generations. Outlawing them by a convention that serves to bring about a total and universal prohibition of chemical weapons must respond to the will of the States and ensure responsible implementation by the international community in favour of peace, the preservation of the species, the dignity of the human person and the preservation of the only planet on which we can still make civilized history.

3. Cuba

[Original: Spanish]
[19 March 1990]

1. On this question, the Government of the Republic of Cuba considers that the adoption of the resolution mentioned constitutes a valid and commendable exhortation to do away with the danger represented by the use of chemical weapons, for the highest aspiration of mankind, namely the supreme right to life. The use of chemical weapons, especially against civilian populations, by the death and suffering it inflicts on defenceless people and the effects it produces on flora, fauna and the environment in general, is in the view of the Government of the Republic of Cuba a flagrant and massive violation of the basic human right, the right to life.

2. The 1925 Geneva Protocol, which prohibits the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare, undoubtedly constitutes a valuable instrument for outlawing the use of such inhuman weapons of mass destruction. The Government of the Republic of Cuba, which pursues a policy based on humanitarian principles and rejects and condemns the use of chemical and bacteriological weapons, acceded to the Geneva Protocol soon after the revolutionary victory of 1959 and, faithful to its international obligations, is scrupulously complying with the provisions of that instrument.

3. Cuba declares itself in favour of the establishment of a convention that prohibits the development, production, stockpiling and use of chemical weapons and provides for their destruction. To that end, it is actively and constructively participating in the negotiating process under way in the framework of the Conference on Disarmament for the purpose of creating an instrument which, on a global and non-discriminatory basis, contributes to respect for the right to life.

4. Regrettably, it must be said that, at a time when international negotiations are being held with a view to concluding the above-mentioned convention as soon as possible, there are States which are expanding and improving the production of new, lethal generations of these instruments of mass extermination, while their preparedness and political will to negotiate a global and non-discriminatory international instrument still does not respond to the urgency with which the international community views those negotiations. Such States are, in fact, perpetuating a threat against the peoples and against civilian populations. Therefore, the best contribution to the exercise of the supreme human right, the right to life, is the adoption of a convention which prohibits and eliminates all chemical weapons and which can rely on participation and observance by all States.

4. Dominican Republic

[Original: Spanish]
[24 January 1990]

The Secretary of State for Foreign Relations of the Dominican Republic is pleased to inform the Secretary-General of the United Nations that the Government of the Dominican Republic shares the concern of the Sub-Commission over reports of alleged use of chemical weapons against civilian populations, resulting in death, misery and disability, that it firmly rejects the use of chemical weapons and that in our country the right to life is respected and chemical weapons have never been used, in strict compliance with international obligations in this sphere.

5. Egypt

[Original: Arabic]
[1 March 1990]

The text of the above-mentioned resolution concords with Egypt's official position on the question of the elimination of chemical weapons and endeavours to ensure their prohibition through a universally applicable international convention on the complete and total prohibition of the use of weapons of mass destruction. Particular importance must be attached to the resolution's

reference to the fact that the use of such weapons, especially against civilians, is incompatible with the principles of human rights, which prohibit any form of torture or cruel, inhuman or degrading treatment or punishment.

6. Philippines

[Original: English]
[6 February 1989]

1. The Philippines joined 140 other States at the 1989 Paris Conference to reaffirm its commitment to the 1925 Geneva Protocol. As a South-East Asian country, the Philippines is committed to keeping pace in the region by keeping it free from weapons of mass destruction, including chemical weapons.

2. The Philippines realizes the urgent need for the conclusion of a comprehensive treaty to complement the 1925 Geneva Protocol. In compliance with his request, the Philippines furnished the Secretary-General of the United Nations, through the Philippine Mission in New York, on 30 June 1988, with a list of Filipino experts and Philippine laboratories which could be tapped in cases of investigation.

7. Poland

[Original: English]
[20 March 1990]

1. Poland does not produce, possess or intend to acquire chemical weapons. On 17 June 1925, Poland signed and ratified without reservations the Protocol for the Prohibition of the Use in War of Asphyxiating Poisonous or Other Gases, and Bacteriological Methods of Warfare.

2. Poland condemns the use of chemical weapons and reaffirms its commitment not to use them. Poland restates its serious concern at recent violations of use of chemical weapons and supports the humanitarian assistance given to the victims of use of chemical weapons.

3. At the Paris Conference on the Prohibition of Chemical Weapons in 1989, Poland recognized the importance of the 1925 Geneva Protocol and the necessity of concluding of a convention banning the development, production, stockpiling and use of all chemical weapons and their destruction. Poland is doing its best within its power, to reach the prompt finalization and setting into force of the convention. It should be global, comprehensive, effectively verifiable and with equal obligations for all States parties.

8. Qatar

[Original: Arabic]
[6 February 1989]

1. The State of Qatar acceded to the 1925 Geneva Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases and bacteriological methods of warfare on 7 April 1976, and also acceded to the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction on 17 April 1975.

2. The State of Qatar does not manufacture chemical weapons, nor does it need them for defensive purposes. Consequently, the State of Qatar does not possess any chemical weapons, nor does it intend to acquire them since it is committed to the 1925 Geneva Protocol and also to the 1972 Biological Weapons Convention. It regards the increasingly widespread ability to manufacture and produce chemical weapons as a real danger that can be averted only through the drafting of an integrated convention imposing a total ban on the production and use of chemical weapons, as part of the overall disarmament process. The State of Qatar calls for the rapid conclusion of other treaties with a view to achieving a substantial reduction in strategic weapons and eliminating chemical weapons, within the context of overall disarmament.

3. The State of Qatar participated in the Conference of States parties to the 1925 Geneva Protocol, held at UNESCO Headquarters at Paris from 7 to 11 January 1989, and approved the final declaration issued at that Conference.

4. The State of Qatar stresses the need to refrain from using chemical weapons and condemns any use thereof. It also reaffirms its full commitment to the 1925 Geneva Protocol and calls upon States that have not yet signed that Protocol to sign it and become a party thereto. The State of Qatar expresses its grave concern at the increasing threat to international peace and security arising from the danger of the use of chemical weapons and affirms its support for any steps that the United Nations and its Secretary-General may take in this regard.

9. Turkey

[Original: English]
[21 March 1990]

1. In line with the objective of strengthening international peace and security, Turkey has always been supportive of disarmament initiatives concerning nuclear and other weapons of mass destruction. In doing so, Turkey is of the opinion that such a disarmament process should result not in weakening but increasing the security of the countries concerned. One of the main objectives of disarmament is to achieve more security. Within this framework, Turkey is fully aware that the proliferation of chemical weapons constitutes a serious threat to the world and to her own region. Turkey attaches prime importance to the total and global banning of chemical weapons. Turkey does not have chemical weapons, nor does she aspire to possess any in the future.

2. Turkey supports the efforts deployed by the Conference on Disarmament at Geneva and is in favour of the early conclusion of a comprehensive convention prohibiting on a global basis, the development, production, stockpiling, transfer and use of chemical weapons, under an effective verification mechanism. Turkey also welcomes any initiative which can contribute to the realization of this objective.

3. Resolution 1989/39 entitled "Respect for the right to life: elimination of chemical weapons" adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 1 September 1989 does not contradict the above-mentioned position of Turkey, and underscores the urgent

necessity for eliminating all chemical weapons. Moreover, the resolution draws attention to the human rights aspect of the issue and thus points out another reason for the early conclusion of the convention prohibiting chemical weapons.

10. Venezuela

[Original: Spanish]
[15 January 1990]

1. Accordingly, we should like to inform you of the position of the Government of Venezuela on some of the questions raised by the existence of chemical weapons. First, I repeat that Venezuela thoroughly condemns the use of chemical weapons and shares the concern of the international community over recent cases of the use of chemical weapons and the danger that would result from their wide possession and use.

2. The Government of Venezuela signed the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare in 1925 and ratified it in 1928 in the conviction that that international instrument would constitute a sufficient factor of restraint to definitely prevent the possible use of weapons of this kind. In that connection, it did not enter any reservation that would subject its observance of the Convention's provisions to the requirement of prior non-use of this class of weapons by another State. What is more, it considers that, in order to ensure strict compliance with the principles and objectives of that Protocol, it is imperative that the countries which did enter reservations to it should withdraw them, because most of those reservations are designed to preserve, for the States that entered them, the option of using chemical weapons as a reprisal, should that be deemed necessary.

3. We also wish to reiterate the position already presented in other forums - notably the United Nations General Assembly, the Paris Conference on Chemical Weapons and the Canberra Conference of Government and Industry against Chemical Weapons - to the effect that Venezuela does not possess chemical weapons, either for its own account or for the account of others, and has no intention of acquiring them. It does not produce any of the lethal toxic substances whose possession and manufacture are to be outlawed by the future international convention that is being negotiated in the Conference on Disarmament, and is prepared to submit to the control and verification system to be established by the new convention.

4. The Government of Venezuela considers that the only way to put an end to both vertical and horizontal proliferation of chemical weapons is by promptly concluding the international instrument that would impose a complete and effective prohibition of the development, production, stockpiling and use of these weapons and would provide for their destruction.

5. Lastly, we wish to state that Venezuela, as a member of the Conference on Disarmament, is actively participating in the negotiations concerning the convention and will continue its efforts in those negotiations with a view to the earliest possible completion of the drafting of the final text of that instrument. In the meantime the Government of Venezuela believes that there should be an immediate moratorium regarding the production of chemical weapons, pending the entry into force of the convention, in order to prevent countries that have such weapons from continuing to produce and improve them.

III. REPLIES FROM NON-GOVERNMENTAL ORGANIZATIONS

1. International Committee of the Red Cross

[Original: French]
[12 February 1990]

The use of chemical weapons is an indiscriminate and particularly cruel means of warfare and we hope that the United Nations convention on the production, acquisition, transfer and use of chemical weapons will be adopted very soon. This instrument should eliminate the use of chemical weapons under any circumstances and thus fill the gaps left by the 1925 Protocol.

2. International Council of Environmental Law

[Original: English]
[1 March 1990]

1. We fully endorse the resolution and consider it essential that States ensure that a ban on the development, production and stockpiling of chemical weapons is effectively maintained. This being said, we are also concerned by the rising problems linked to the disposal of such weapons - a subject which causes alarm in a number of countries at present.

2. We would like to urge the State Members of the Conference on Disarmament to pursue their negotiations on a Convention on the Prohibition of the Development, Production, Stockpiling and Use of all Chemical weapons. We also wish to request the State Members of the Conference on Disarmament, as a matter of urgency, to include in such a Convention:

(a) Provisions requiring the containers and storage facilities for chemical weapons pending their elimination to be carefully maintained so as to pose no hazards to the environment;

(b) Provisions regulating the safe transport of chemical weapons to storage facilities pending their elimination as well as to destruction facilities thereafter, and requiring that their transboundary movement be handled in conformity with the Convention on the Control of the Transboundary Movement of Hazardous Waste, signed in March 1989 in Basel, Switzerland; and

(c) Provisions on the safe elimination and destruction of chemical weapons, paying particular attention to the environmental effects of such destruction at existing facilities as well as the construction of additional, adequate facilities for destruction near areas where stockpiles are stored pending their elimination.

Lastly, we wish to call upon Governments to provide notification of actions taken under any chemical stockpile disposal programme including the production of Environment Impact Statements related thereto.

3. International Institute of Humanitarian Law

[Original: English]
[9 January 1990]

1. The Medico-juridical Commission of Monaco, the Red Cross of Monaco as a member of the International Red Cross and Red Crescent Movement, and the International Institute of Humanitarian Law have, for a long time, within their traditional activities, been engaged in examining the problem of the use of chemical weapons. Their efforts were directed towards the elimination of this danger. This problem has not been solved in a satisfactory way thus far and continues to be one of the preoccupations of mankind.

2. Therefore the three institutions decided to convene in Monaco, from 27 to 29 April 1989, a Round Table of experts on the use of chemical weapons in armed conflicts, covering various aspects of the problem. His Highness the Prince Heir Albert, President of the Red Cross of Monaco, addressed the participants of the Round Table, underlining the great danger of chemical weapons and the need for action to eliminate this danger. He recalled the encouraging Conference in Paris against these weapons. He hoped the Round Table would achieve fruitful results.

3. The Round Table held its work under the chairmanship of the President of the International Institute of Humanitarian Law, Prof. J. Patrnogic. Reports were submitted by General E. Evrard, Ambassador B. Sujka, U. Palwankar, B. Jakovljevic, Y. Sandoz and C. Palley, concerning various aspects of the problem of chemical weapons: medical, juridical and humanitarian aspects, United Nations actions, and actions of the International Red Cross and Red Crescent Movement, relating to both international and non-international armed conflicts, in the light of existing rules and practice. The fruitful and sincere discussion that followed was an open dialogue in which all experts participated actively covering all possible aspects of the use of chemical weapons and the necessary measures to eliminate the dangers which these weapons represent. At the end, the President of the International Institute of Humanitarian Law summarized the work of the Round Table in the form of his concluding statement, which will be addressed to all those concerned with the problem of chemical weapons.

4. In the reports and the discussion, all participants stressed that these weapons represent one of the most serious concerns of mankind, because of their nature and the threat to the survival of man which their use represents. The greatest danger is represented by those chemical weapons which have lethal effects. There also exist chemical agents which are not intended to have lethal effects or to inflict serious injury, but are intended to have only incapacitating or harassing effects, some of which are used also in peacetime by the police. However, even these agents could kill or inflict serious injuries or have effects on the central nervous system, depending upon the circumstances of their use and the dosage, taking into account that persons react in different ways to these agents and that certain categories of persons, such as children, the infirm and the sick are particularly vulnerable. It was pointed out that the controlled conditions for the use of these types of agents, existing in peacetime, do not correspond to the situations of armed conflict; in such circumstances their use would be under strict control. There is present equally the danger of escalation, the

response of one party to the conflict to the use of chemical weapons by the other. Therefore, there is correspondingly far greater danger of the use in time of war of incapacitating and harassing chemical agents.

5. Chemical weapons affect human beings by inflicting great sufferings, often over a prolonged period of time, gradually causing injuries, illness or death. This is a very cruel method of attacking the enemy. These weapons are unpredictable in their effects and scope, they act without discrimination so that various categories of persons who should enjoy protection from attacks in war, including doctors themselves, cannot in fact enjoy protection. These weapons also affect great numbers of people, becoming in this way mass destruction weapons. During the Round Table, participants cited many examples of the use of chemical weapons and of their effects, some of them even in recent conflicts.

6. The dangers of chemical weapons for the whole of mankind are such that it is not sufficient to reaffirm the rules which prohibit their use, but it is indispensable to undertake preventive measures. Such measures should include prohibition of the development of new weapons, their production, their stockpiling, trading in them, their transfer and their acquisition by countries which do not produce them; it would also be necessary to destroy existing stocks. All these measures should be taken under appropriate international control.

7. The discussion centered upon three distinct and important but interrelated aspects of chemical weapons: medical, technical and legal.

(a) With regard to the medical aspects, it was noted that national and international associations of doctors and other medical corps ought both to intensify and co-ordinate their efforts with a view to influencing governments and armed forces personnel into reacting positively to current efforts to eliminate chemical weapons. To this end, they could exploit their regular conferences and every media exposure given to them. They ought equally to foster efforts within the world medical community aimed at elaborating norms and at prohibiting research that would have as a direct result an enhancement of the destructive effects of existing chemical weapons. In this connection, there arises the problem of the limits of responsibility of doctors at various levels. Such responsibility requires more precise regulation.

(b) The technical aspects related to elimination of chemical weapons were found to bear essentially upon their definition, classification and verification of compliance, should an agreement on prohibiting their production and stockpiling be arrived at. It was noted that this constitutes, at present, a distinct possibility testified by the ongoing negotiations concerning a draft Convention on chemical weapons now being elaborated under the auspices of the United Nations Conference on Disarmament. The definition of "chemical weapons" runs into difficulties due to the existence of differing levels of toxicity, dual purpose agents, and the need for allowing unimpeded functionning of chemical and pharmaceutical industries serving the medical, industrial and agricultural sectors. It was therefore suggested that the general purpose criterion be applied in defining chemical weapons. Verification of compliance with an eventual agreement banning chemical weapons would require trained inspectors, appropriate equipment and co-operation between States. Towards this end, it was suggested that the international body to be charged with this task must be assisted by appropriate scientific and technical personnel.

(c) The discussion on the legal aspects of chemical weapons began with an identification of the lacunae in existing international instruments relating to their use, particularly the 1925 Geneva Gas Protocol and the 1977 Additional Protocol I to the Four Geneva Conventions of 1949 for the protection of war victims. The 1925 Protocol did not prohibit the production and stockpiling of such weapons; it did not formulate the prohibition of their use as an erga omnes obligation; it constituted - due to the reservations made by a large number of States - basically a no-first-use treaty and did not provide for either verification mechanisms or sanctions. Additional Protocol I of 1977 refers only to international armed conflicts, does not explicitly refer to chemical weapons in its articles 35 and 36 and does not prohibit the use of forbidden weapons in reprisals against combatants. However, the participants noted that despite these lacunae, the Protocol and other texts such as The Hague Rules furnished an adequate basis for a generally accepted opinio juris prohibiting the use of chemical weapons, since such weapons are weapons of mass destruction, kill indiscriminately and cause unnecessary suffering. For this reason, States, until recently, preferred denying use of chemical weapons rather than justifying their use.

In order to further the legal basis for the total ban of chemical weapons, the participants agreed that both the law of armed conflicts approach and the human rights approach ought to be put together. Such a joint approach could permit the application of a total ban to situations of non-international conflicts and would resolve some difficulties in defining chemical weapons. With regard to international armed conflicts, international lawyers and statesmen fully agree that chemical weapons constitute arms of mass destruction. In situations of internal conflicts and other conflict situations requiring law enforcement by sovereign States, basic and universally accepted human rights, such as the right to life, to physical integrity and to freedom from inhuman treatment could be invoked to justify prohibition of use of chemical weapons.

Notes

1/ The documents sent by the Under-Secretary-General for Political and Security Council Affairs will be available during the session of the Sub-Commission.

2/ Attention is drawn to the relevant parts of the report of Conference on Disarmament contained, in particular, in paragraphs 85-87.

3/ Attention is drawn to paragraphs 1, 2, 6 and 7 and to Annex I.

4/ The documents sent by the Department for Disarmament Affairs will be available during the session of the Sub-Commission. One of the documents (A/44/561) was also sent by the Under-Secretary-General for Political and Security Council Affairs.

5/ Attention is drawn to the report itself and to the documents listed in that report.

6/ See footnote 3/ above.

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Forty-second session
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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

RESPECT FOR THE RIGHT TO LIFE: ELIMINATION OF CHEMICAL WEAPONS

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I. IRELAND ON BEHALF OF THE MEMBER STATES OF THE EUROPEAN COMMUNITY

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[27 June 1990]

1. The Twelve Member States of the European Community believe that the international community faces today the risk of proliferation of a particularly loathsome category of weapon, to whose use mankind was first exposed on their continent. Since then, the further development and modernization of chemical weapons have greatly increased their lethal potential and the risk of these weapons being more widely used.

2. Recent use of chemical weapons, which was strongly condemned by the Twelve (who fully support the Security Council resolutions on the matter), has demonstrated the urgent need to strengthen compliance with the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases. The Twelve have all adhered and strongly conform to this important Protocol. They urge all States which have not yet done so to become parties to it.

3. The Twelve are also fully committed to the goal of early conclusion of a global, comprehensive and verifiable convention on the prohibition of development, production, stockpiling and use of chemical weapons and on their destruction. They note that important progress has been accomplished in the Geneva negotiations, while a certain number of difficulties remain outstanding. The Twelve stress the need to maintain the momentum of the negotiations in an effort to reach early agreement.

4. The Twelve support the role of the Secretary-General of the United Nations in the prompt and effective investigation of allegations of use of chemical weapons. As they have done before, the Twelve are ready to co-operate with the Secretary-General in the performance of his task, in accordance with resolution 44/115B of 15 December 1989 (adopted without a vote) of the United Nations General Assembly.

5. The Twelve are also concerned at the growing risks of proliferation of chemical weapons. In conformity with the Final Declaration of the Paris Conference on the 1925 Geneva Protocol, held in January 1989, they have implemented controls, under regulation (EEC) No. 428/89, on the export of certain chemical products which could be used for the production of chemical weapons. However, these measures, designed to prevent proliferation, can only be an intermediate step. In the view of the Twelve, the most effective way to eliminate any risk of proliferation of chemical weapons is by the coming into effect as soon as possible of a global, comprehensive and effectively verifiable convention banning their development, production, possession and use.

6. The Twelve share the concern of the Sub-Commission on the reports of the alleged use of chemical weapons against civilian populations, resulting in death, misery and disability; on the long-term effects of the use of such weapons upon human health and the environment; and on the need to sensitize public opinion to the massive, inhuman and indiscriminate effects of the use of chemical weapons and to the need for their complete elimination. However, the Twelve also consider that, as in the past, the main focus for discussion

of chemical weapons and other disarmament issues should continue to be the First Committee of the General Assembly and the Conference on Disarmament.

II. MOROCCO

[Original: FRENCH]
[3 May 1990]

1. In its resolution 1989/39, the Sub-Commission on Prevention of Discrimination and Protection of Minorities expressed its concern at reports of the alleged use of chemical weapons against civilian populations, resulting in death, misery and disability.

2. In view of the extent of the immediate and long-term effects of the use of such weapons on human health and the environment and in view of the insidious, inhuman and odious character of these satanic weapons, every human being who respects moral or religious principles must condemn the use, production and stockpiling of these materials in order to avert their proliferation.

3. As a Muslim State, Morocco respects the human person and associates itself with all those who declare the use of these weapons to be contrary to the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto.

4. Morocco earnestly hopes that the United Nations will strongly condemn the use of chemical weapons as an inhuman, debasing and degrading means of torture. Morocco hopes that the natural right to life will be guaranteed and proclaimed on all occasions.

III. SYRIAN ARAB REPUBLIC

[Original: ENGLISH]
[4 May 1990]

1. The Syrian Arab Republic abides by its international obligations and supports the elimination of mass destruction weapons (nuclear and chemical), as well as the efforts to sensitize public opinion to the massive, inhuman and indiscriminatory effects of the use of nuclear and chemical weapons, and the need for their complete elimination.

2. It would like to draw attention to the fact that the zionist occupying authorities have hundreds of times used chemical weapons against Arab citizens in the Palestinian and other Arab territories, especially against demonstrating children, which has caused more suffering and misery among the Arab population under occupation and resulted in several deaths, thousands of disabled persons and hundreds of abortions.

3. The use of chemical weapons by zionist occupying forces in the occupied Arab territories contradicts international law, the Charter of the United Nations and pertinent resolutions.

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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

RESPECT FOR THE RIGHT TO LIFE: ELIMINATION OF CHEMICAL WEAPONS

Report of the Secretary-General prepared in accordance with Sub-Commission resolution 1989/39

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I. Reply from El Salvador

[Original: Spanish]
[18 July 1990]

The Ministry of Public Health considers the use of chemical and biological weapons as a violation of the most elementary human rights, because they harm every living thing within the area in which they are used. The fact that, when used, they contaminate air and water makes them intangible, and

there is no defence against them. They indiscriminately attack the civilian population regardless of age and sex. Therefore, our Government must declare its complete opposition to their use and vigorously support their total prohibition. We deem it necessary to emphasize that our armed forces do not use weapons of this kind, and personnel of this Ministry have carried out some investigations on the matter. Unconfirmed information seems to indicate that, in some areas of conflict in our country, bodies (of animals) in a state of decomposition have been found in wells or other water sources - which might be a simple and empirical, but effective, way of producing gastro-intestinal infections in anyone consuming water from such sources. It has not been possible to prove that contamination of the sources was intentional.

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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

RESPECT FOR THE RIGHT TO LIFE: ELIMINATION OF CHEMICAL WEAPONS

Report of the Secretary-General prepared in accordance with Sub-Commission resolution 1989/39

Addendum

1. The present addendum contains a communication received on 28 August 1990, from the International Commission of Health Professionals for Health and Human Rights, a non-governmental organization in consultative status with the Economic and Social Council (category II).

2. The communication received reads as follows:

"The International Commission of Health Professionals for Health and Human Rights received information from toxicologists and medical specialists who visited Licua and Jamba in Angola between 19 and 23 February 1990. The scientists concerned clinically examined 8 out of 40 to 50 patients in Jamba, Biyonge and Licua and conducted laboratory analyses of specimens taken from them as well as of bomb fragments and soil samples from bomb craters in the area where patients alleged they had suffered injury. The specialists, Professor M. Dominguez of the Faculty of Medicine of the Unibersidad Complutense de Madrid, Professor Erich Schmutzhard, Department of Neurology, University of

Innsbruck, Professor G. Freilinger, Department of Surgery, University of Vienna, and Professor A. Heyndrickx, Laboratory of Criminal Toxicology, University of Ghent, concluded that the patients had been in direct contact with chemical bombs which were composed of cyanide derivatives such as phosphine (PH3). They supported their conclusions with a toxicological and chemical report by Professor G. Machata and Professor W. Vycudilik of the University of Vienna on a bomb fragment from Buangundo which showed the presence of a chemical warfare agent, phosphine (PH3).

The scientists found that the patients were suffering from sensory and motor neuropathies following chemical intoxication. They pointed out that the symptoms were also compatible with poisoning produced by a diet of tropical plants such as cassava. However, taking into account the evidence of the victims, the bombardments, the number of paralyzed persons, the clinical examinations, the fact that cassava was not frequently consumed in Angola, and the analyses by three different toxicologists of bomb fragments, the scientists concluded on a differential diagnosis that chemical weapons had been employed in the region".

3. The organization also, by a letter dated 9 August 1990, transmitted material which concerns a mission to Angola, undertaken by Professor Dr. A. Heyndrickx, University of Ghent, Belgium, 19 to 23 February 1990 (UNITA - Mr. Savimbi). The material received by the secretariat contains the following documents:

(a) A letter signed by Professor Dr. G. Machata and Professor Dr. W. Vycudilik, Institute of Forensic Medicine, University of Vienna (Austria) addressed to Professor Gerhard Freilinger, IInd Surgical Clinics, University of Vienna, dated 10 April 1990, referring to the results of a chemical analysis of toxin (German);

(b) Report No. ANG 90-1/Pj 894, entitled "Clinical toxicological report and conclusion of samples brought to the Department of Toxicology at the State University of Ghent, Belgium, for toxicological investigation", by Professor A. Heyndrickx, dated 4 April 1990 (English);

(c) Report issued by four professors of the Universities of Ghent (Belgium), Vienna (Austria), Innsbruck (Austria) and Madrid (Spain), dated 17 April 1990 (French), following five days of extensive clinical examinations of military and civilian victims in Jamba, Biyonge and Licua, presented as having been contaminated by chemical agents;

(d) "Summary of clinical studies carried out from 18 to 24 February 1990 in the assistance centres of Jamba and Licua (Angola)", submitted by Manuel Dominguez, dated 31 March 1990 (Spanish);

(e) "Report on the neurological examination of eight patients in Southern Angola, 19-23 February 1990, in Central Hospital Jamba, Rehabilitation Centre Biyonge and Hospital Licua", by Dr. Erich Schmutzhard, University of Innsbruck (Austria), no date (English);

(f) "Visit to the Military Hospital of Luangundo, 20-21 February 1990". Attached to this document are copies of seven photos (English);

(g) Addendum: Letter from Patrice Renault, president of the Société Internationale pour les Droits de l'Homme (International Society for Human Rights), France; and a "Report on the visit to Angola by Patrice Renault, Anne-Marie Goussard and Marc Pondaven", no date (French).

4. The full text of all the documents mentioned is available for consultations at the Centre for Human Rights.

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ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS

Note by the Secretary-General

1. At its thirty-second session, the Sub-Commission adopted its resolution 1 B (XXXII) of 5 September 1979, by which it decided to establish each year a sessional working group composed of five members of the Sub-Commission with due regard to equitable geographical distribution, to meet during the sessions of the Sub-Commission in order to consider ways and means of encouraging Governments which had not yet done so to ratify or accede to international human rights instruments such as: the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Slavery Convention; the Protocol amending the Slavery Convention signed at Geneva on 25 September 1926; the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; and such other instruments as might be designated in the future by the Sub-Commission.

2. In the same resolution, the Sub-Commission requested the Secretary-General, well before the annual sessions of the Sub-Commission, to write to Governments which had not yet accepted the above-mentioned instruments and such other instruments as might be designated in the future, requesting them to inform the Sub-Commission of the circumstances which so far

had not enabled them to ratify or accede to the above-mentioned instruments and to explain any particular difficulties they might face, in respect of which the United Nations could offer any assistance; invited the sessional Working Group of the Sub-Commission to examine the replies received from Governments; and requested the Working Group to consider, in appropriate cases, what forms of assistance could be provided to Governments by the United Nations, with a view to assisting them to ratify or adhere to the above-mentioned conventions as speedily as possible.

3. Following the recommendations of the Sessional Working Group, the Sub-Commission by its resolutions 1982/3 of 7 September 1982, 1983/27 of 6 September 1983, 1984/36 of 30 August 1984 and 1985/5 of 27 August 1985, respectively decided to include the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Discrimination against Women, the two Protocols additional to the Geneva Conventions of 12 August 1949 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in the list of instruments contained in paragraph 1 of its resolution 1 B (XXXII). It also decided, until further review of its mandate, to suspend the work of the Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments and to request the Chairman of the Sub-Commission to appoint one of its members to report to it at its fortieth session on information received under the same resolution.

4. At its fortieth session, the Sub-Commission by resolution 1988/30 of 1 September 1988, again requested its Chairman to appoint one of its members to report to it at its forty-second session on this subject. In the same resolution, the Sub-Commission also requested the Secretary-General to renew the invitation for submission of information communicated by his earlier notes verbales to the Governments of Member States which had not yet replied to those communications, making particular reference to the human rights instruments to which those Governments had not yet become party and drawing the attention of each Government to the instruments which it had already signed but not yet ratified. Additionally, it requested the Secretary-General to update the table containing a country-by-country record of developments relating to ratification of, or accession to, the human rights instruments included in the terms of reference of the Sub-Commission.

5. On the occasion of his official contacts with Member States which had not yet ratified or acceded to the various instruments mentioned in Sub-Commission resolutions 1 B (XXXII), 1982/3, 1983/27, 1984/36 and 1985/5, the Secretary-General has repeatedly urged them to do so and has offered the assistance of the United Nations in helping to overcome any special difficulties in that regard. Similarly, the Under-Secretary-General for Human Rights, on the occasion of his contacts with Member States, has also drawn attention to the importance of the universal acceptance of human rights instruments and to the availability of appropriate assistance under the programme of advisory services and technical assistance of the Centre for Human Rights. In addition, the representatives of States not yet parties to international human rights instruments, who have attended the various regional and subregional human rights seminars and training courses organized by the Centre, have been strongly encouraged to promote ratification or accession to those instruments by their Governments.

6. No additional information has been received from States pursuant to Sub-Commission resolution 1 B (XXXII) since the Sub-Commission's fortieth session.

7. Pursuant to resolution 1988/30 of the Sub-Commission, the Secretary-General submits in the Annex to this note, a table containing a record of developments which have taken place in connection with the ratification of, or accession to, human rights instruments since the closure of the fortieth session of the Sub-Commission (2 September 1988).

Annex

Table containing a record, as of 1 June 1990, of the ratifications of, or accessions to human rights instruments that have taken place since the closure of the fortieth session of the Sub-Commission (2 September 1988)

1. International Covenant on Economic, Social and Cultural Rights

State	Date of receipt of the instrument of ratification or accession
Algeria	12 September 1989
Burundi a/	9 May 1990
Ireland	8 December 1989
Republic of Korea a/	10 April 1990
Somalia a/	24 January 1990

2. International Covenant on Civil and Political Rights

State	Date of receipt of the instrument of ratification or accession
Algeria	12 September 1989
Burundi a/	9 May 1990
Ireland	8 December 1989
Republic of Korea a/	10 April 1989
Somalia a/	24 January 1990

3. Optional Protocol to the International Covenant on Civil and Political Rights

State	Date of receipt of the instrument of ratification or accession
Algeria a/	12 September 1989
Hungary a/	7 September 1988
Ireland	8 December 1989
Libyan Arab Jamahiriya a/	16 May 1989
New Zealand a/	26 May 1989
Philippines a/	22 August 1989
Republic of Korea a/	10 April 1990
Somalia a/	24 January 1990

4. International Covenant on the Elimination of All Forms of Racial Discrimination

State	Date of receipt of the instrument of ratification or accession
Antigua and Barbuda b/	25 October 1988
Bahrain	27 March 1990
Mauritania	13 December 1988
Saint Lucia b/	14 February 1990
Yemen a/	6 April 1989

5. Convention on the Prevention and Punishment of the Crime of Genocide

State	Date of receipt of the instrument of ratification or accession
Antigua and Barbuda b/	25 October 1988
Bahrain a/	27 March 1990
Democratic People's Republic of Korea a/	31 January 1989
Libyan Arab Jamahiriya a/	16 May 1989
United States of America	25 November 1988
Yemen a/	6 April 1989

6. International Covention on the Suppression and Punishment of the Crime of Apartheid

State	Date of receipt of the instrument of ratification or accession
Bahrain	27 April 1990
Mauritania a/	13 December 1989

7. Slavery Convention

State	Date of receipt of the instrument of ratification or accession
Antigua and Barbuda b/	25 October 1988
Saint Lucia b/	14 February 1990

8. Protocol amending the Slavery Convention signed at Geneva on 25 September 1926

State	Date of receipt of the instrument of ratification or accession
Antigua and Barbuda b/	25 October 1988
Saint Lucia b/	14 February 1990

9. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery

State	Date of receipt of the instrument of ratification or accession
Antigua and Barbuda b/	25 October 1988
Bahrain a/	27 March 1990
Libyan Arab Jamahiriya a/	16 May 1989
Saint Lucia b/	14 February 1990

10. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

State	Date of receipt of the instrument of ratification or accession
Yemen a/	6 April 1989

11. Convention on the Elimination of All Forms of Discrimination against Women

State	Date of receipt of the instrument of ratification or accession
Antigua and Barbuda a/	1 August 1989
Belize	7 March 1990
Chile	7 December 1989
Libyan Arab Jamahiriya a/	16 May 1989
Luxembourg	2 February 1989
Madagascar	17 March 1989
Sierra Leone	11 November 1988
Trinidad and Tobago	12 January 1990

12. Protocols additional to the Geneva Conventions of 12 August 1949

State	Date of receipt of the instrument of ratification or accession
Algeria a/	16 August 1989
Barbados a/	19 February 1990
Bulgaria	26 September 1989
Byelorussian Soviet Socialist Republic	23 October 1989
Côte d'Ivoire	20 September 1989
Czech and Slovak Federal Republic	14 February 1990

State	Date of receipt of the instrument of ratification or accession
Gambia	12 January 1989
Greece (Protocol I only)	31 March 1989
Hungary	12 April 1989
Liechtenstein	10 August 1989
Luxembourg	29 August 1989
Mali a/	8 February 1989
Malta a/	17 April 1989
Nigeria a/	10 October 1988
Peru	14 July 1989
Solomon Islands	19 September 1988
Spain	21 April 1989
Ukrainian Soviet Socialist Republic	25 January 1990
Union of Soviet Socialist Republics	29 September 1989
Yemen	17 April 1989

13. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

State	Date of receipt of the instrument of ratification or accession
Algeria	12 September 1989
Australia	8 August 1989
Brazil	28 September 1989
Chile	30 September 1988
China	4 October 1988
Finland	30 August 1989
Greece	6 October 1988
Guatemala a/	5 January 1990
Guinea	10 October 1989
Italy	12 January 1989
Libyan Arab Jamahiriya a/	16 May 1989
Netherlands	21 December 1988
New Zealand	10 December 1989
Paraguay	12 March 1990
Poland	26 July 1989
Portugal	9 February 1989
Somalia a/	24 January 1990
Tunisia	23 September 1988
United Kingdom of Great Britain and Northern Ireland	8 December 1988

Notes

a/ Accession.

b/ Date of receipt of notification of succession.

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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Analytical commentary on the draft principles contained in the first revised text of the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1989/36) elaborated by the Chairman/Rapporteur of the Working Group on Indigenous Populations, Ms. Erica-Irene A. Daes

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GE.90-12415/2105B

I. INTRODUCTION

1. At its thirty-ninth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted the Chairman/Rapporteur of the Working Group on Indigenous Populations, Ms. Erica-Irene Daes, with the task of preparing a working paper containing draft principles and preambular paragraphs for insertion in a draft declaration on indigenous rights. This was approved by the Commission on Human Rights, and by the Economic and Social Council in its resolution 1988/36. Subsequently, the working paper (E/CN.4/Sub.2/1988/25) was submitted to the Working Group at its sixth session.

2. In resolution 1988/18, the Sub-Commission recommended that Ms. Daes prepare a first revised text of the draft declaration as a whole based on comments made at the Working Group's sixth session and on written observations and suggestions received from Governments, indigenous peoples, intergovernmental and non-governmental organizations. The Commission on Human Rights welcomed this decision by resolution 1989/34.

3. The first revised text of the draft Universal Declaration on the Rights of Indigenous Peoples was submitted to the Working Group at its seventh session (E/CN.4/Sub.2/1989/33), and was the subject of a wide-ranging discussion among the members of the Working Group and observers of Governments and indigenous organizations. Comments and suggestions made orally in the course of the Working Group's seventh session have been analytically summarized in the Working Group's report (E/CN.4/Sub.2/1989/36). It should be noted that all speakers supported the standard-setting activities and stated that the revised draft represents an important step forward and provides a good formulation for further endeavours in reaching agreement on a Universal Declaration on the Rights of Indigenous Peoples.

4. In resolution 1989/34, the Sub-Commission recommended that the Chairman/Rapporteur of the Working Group be entrusted with the task of preparing a second revised text of the declaration to be based on comments made orally at sessions of the Working Group and on written observations and suggestions received from Governments, indigenous peoples, intergovernmental and non-governmental organizations. By resolution 1990/62, the Commission on Human Rights endorsed this approach, which was also approved by the Economic and Social Council in its resolution 1990/...

5. In the course of the last three years, the written and oral comments relating to the draft declaration, as it now stands in a preliminary version, amount to a substantial bulk of documents. At this stage of the proceedings, when the Working Group is about to enter the first reading of each article of the draft declaration, the Chairman/Rapporteur feels that an effort to compile, analyse, and respond constructively to the wide variety of useful comments and suggestions would constitute a practical and appropriate method for facilitating the Group's deliberations. Accordingly, this analytical commentary was elaborated and it contains the basic written observations and suggestions received. Furthermore, in this paper, Ms. Daes attempts to identify those provisions upon which there appears to be broad agreement; these provisions are listed in Part II of this working paper. Other draft

provisions are set out in Part III, with an analysis of the comments thus far made on each of them and preliminary suggestions for the direction of further consideration.

6. The Chairman/Rapporteur wishes to express her appreciation to all those who have made constructive written and oral contributions to the further analysis and refinement of the text of the draft declaration. She also expresses the sincere hope that the ongoing dialogue between all the parties concerned will continue with full vigour until the draft declaration can be adopted in its final form.

II. DRAFT PROVISIONS ON WHICH THERE IS BROAD AGREEMENT

7. The Chairman/Rapporteur, Ms. Daes, is pleased to note that a number of draft preambular paragraphs and articles have thus far attracted favourable observations or in any case no critical comments or suggestions, and therefore may indeed be widely acceptable. The Working Group at its eighth session may wish to consider adopting these provisions in first reading, so as to be able to focus its attention on those provisions of the draft declaration on which differing views have been expressed.

8. The provisions of the draft declaration, as it appears in the first revised text and which might be adopted at first reading, are the following:

(a) in the preamble, all except the first, fifth and twelfth paragraphs;

(b) in Part II, the third, fourth, and seventh articles;

(c) in Part III, the thirteenth article;

(d) in Part IV, the nineteenth and twentieth articles;

(e) in Part V, the twenty-second and twenty-sixth articles;

(f) in Part VII, the twenty-ninth and thirtieth articles.

9. The provisional adoption of the foregoing draft articles and paragraphs, in first reading, would leave remaining for discussion and further elaboration three preambular paragraphs and 20 articles. The Chairman/Rapporteur believes this approach would not only facilitate but also accelerate the work of the Working Group considerably, and help focus the Working Group's consultations with Governments and indigenous peoples.

III. PROVISIONS ON WHICH FURTHER CONSIDERATION IS NEEDED

10. This part analyses many of the suggestions made by Governments, United Nations organs and specialized agencies, indigenous organizations and non-governmental organizations for the further revision of the draft declaration. Proposals already fully reflected in the first revised text have not been repeated here. The Chairman/Rapporteur also points out suggestions of a technical character which can be incorporated in the second revised text. Generally, however, she has confined her analysis to indicating the possible course of further discussions.

Draft first preambular paragraph

> "Considering indigenous peoples born free and equal in dignity and rights in accordance with international standards while recognizing the right of all individuals and groups to be different, to consider themselves different and to be regarded as such,"

11. One government observer felt that a reference to the "right to be different" is inappropriate, since the aim of every State is to ensure that all persons will be on equal footing before the law. Another, while supporting the text in principle, suggested that the reference to "existing" international standards is unnecessarily restrictive.

12. The Chairman/Rapporteur believes that diversity of individual and group identities and cultures is fundamental to a free society, and is not incompatible with equality before the law, as illustrated by the fact that both of these principles are reflected in the International Covenant on Civil and Political Rights (arts. 26 and 27). She notes also in this regard the 1966 UNESCO Declaration of the Principles of International Cultural Co-operation, article 1 (3): "In their richness and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind." Further reference in this connection should be made to the UNESCO Declaration on Race and Racial Prejudice.

13. As to the use of the term "existing", it is true that this could be undesirably restrictive and that it can accordingly be removed from the second revised text.

Draft fifth preambular paragraph

> "Convinced that all doctrines and practices of racial, ethnic or cultural superiority are legally wrong, morally condemnable and socially unjust,"

14. A government observer proposed making this the first or second preambular paragraph. The Chairman/Rapporteur believes this suggestion should be taken up at the second reading as part of a general review of the ordering of the text.

Draft ninth preambular paragraph

"Believing that indigenous peoples should be free to manage their own affairs to the greatest possible extent, while enjoying equal rights with other citizens in the political, economic and social life of States,"

15. A government observer expressed concern that this principle could be incompatible with equality before the law and lead to conflicts, while an indigenous observer recommended deleting the words "to the greatest possible extent" on the grounds that it is too restrictive.

16. The Chairman/Rapporteur notes that this principle is contained in articles 6 and 7 of ILO Convention No. 169 (1989), where it also makes a balance between internal decision-making and equality of rights with other citizens of the State. Furthermore, it should be pointed out that this preambular paragraph is closely related to those articles of the draft declaration which deal with autonomy and other political and economic rights.

Draft twelfth preambular paragraph

"Acknowledging the need for minimum standards taking account of the diverse realities of indigenous peoples in all parts of the world,"

17. A government observer felt this principle was difficult to understand in the absence of a definition of the term "indigenous peoples".

18. The Chairman/Rapporteur notes that the phrase "diverse realities of indigenous peoples in all parts of the world" has been incorporated in the annual resolutions of the Commission on Human Rights in this field, since the establishment of the Working Group in 1982, most recently in Commission resolution 1990/62 of 7 March 1990. As to questions of definition, she will address those below under the heading "Other matters".

Draft article 1

"The right to the full and effective enjoyment of all fundamental rights and freedoms, as well as the observance of the corresponding responsibilities, which are universally recognized in the Charter of the United Nations and in existing international human rights instruments."

19. One government observer stated that this should be redrafted to make it clear that nothing in the declaration derogates from existing human rights instruments. It should permit the greatest freedom of choice for indigenous peoples, and not limit the options available to individuals. An indigenous observer proposed adding the words "as peoples" before the words "to the full and effective", and the words "including the right to self-determination" after the words "rights and freedoms".

20. The Chairman/Rapporteur believes that the present draft of this article is sufficiently flexible to permit indigenous people to assert and enjoy their individual rights under existing human rights instruments, and to exercise in addition, if they wish, the special rights contained in this declaration. As for the question of self-determination, there may be need for further

discussion of the manner and context in which this principle might be reflected in the draft declaration, unless it is decided that the reference in the tenth preambular paragraph is sufficient.

Draft article 2

> "The right to be free and equal to all the other human beings in dignity and rights and to be free from adverse distinction or discrimination of any kind."

21. A member of the Working Group felt that this should be reworded so as to avoid any paternalistic connotation. Indigenous peoples might have different values and culture, but so do other human beings in other parts of the world.

22. The Chairman/Rapporteur appreciates the concern which has been expressed concerning this draft article, and notes that it is based on article 1 of the Universal Declaration of Human Rights, which states that "All human beings are born free and equal in dignity and rights". Indigenous peoples have in fact frequently been denied this equality and it would therefore seem appropriate to reaffirm the general principle.

Draft article 5

> "The individual and collective right to protection against ethnocide. This protection shall include, in particular, prevention of any act which has the aim or effect of depriving them of their ethnic characteristics or cultural identity, of any form of forced assimilation or integration, of imposition of foreign life-styles and of any propaganda derogating their dignity and diversity."

23. One government observer expressed support for the right to be protected from ethnocide, but felt there was a need for a more precise definition of "ethnocide", or else a list of the acts which constitute ethnocide. Use of the term "propaganda" was also troublesome in the absence of a more precise definition, and should not be interpreted as restricting the legitimate exercise of freedom of speech. One solution would be to restrict the scope of this principle to actions taken by Governments.

24. Other government observers suggested deleting the reference to the imposition of foreign life-styles, which they felt was too vague and might be interpreted as negating compliance with national laws.

25. Participants in the indigenous peoples' preparatory meeting emphasized the importance of non-interference in indigenous peoples' affairs, which is at the foundation of many of the other provisions of the declaration and expresses a natural and fundamental aspiration of many indigenous peoples.

26. The Chairman/Rapporteur acknowledges that the aim of including the reference to "foreign life-styles" in this draft article may be covered by the phrase "forced assimilation or integration". As for "propaganda", she notes that this concept appears in article 20 of the International Covenant of Civil and Political Rights where it includes "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". A restatement or definition may not be necessary in draft article 5, which could be rephrased accordingly, since it would seem clear

that any Government advocacy of forced assimilation or integration of indigenous peoples would be prohibited by the earlier reference to "any act which has the aim or effect of depriving them of their ethnic characteristics or cultural identity".

27. It may be relevant in this context that ILO Convention No. 169, in article 31, imposes a positive duty on States to adopt educational measures among all sections of the national community "with the object of eliminating the prejudices that they may harbour in respect of these people". Article 11 of the draft declaration aims in the same direction.

Draft article 6

> "The right to preserve their cultural identity and traditions and to pursue their own cultural development. The rights to manifestations of their cultures, including archaeological sites, artefacts, designs, technology and works of arts, lie with the indigenous peoples or their members."

28. A government observer expressed concern that this principle as currently worded, might be construed as giving indigenous peoples an exclusive right to the production of certain objects or artworks while another government observer wanted clarification that this provision would provide adequate protection for the market for indigenous art. The meaning of the term "technology" was also questioned.

29. One of the indigenous observers proposed adding a reference to protection of items of special cultural significance. Another suggested that a specific reference should be made to the protection of cemeteries and in particular the return of human remains.

30. With respect to the first point, the Chairman/Rapporteur observes that the World Intellectual Property Organization (WIPO) has adopted guidelines for the protection of folk-art designs and motifs, and thus this principle already enjoys a basis in international law. As to the second point, the Chairman/Rapporteur believes that it may indeed be useful to include the rights to the protection and control of items of cultural significance and to the protection of cemeteries and to the return of human remains more explicitly in this draft article, and invites further comments on this possibility.

Draft article 7

> "The right to require that States grant - within the resources available - the necessary assistance for the maintenance of their identity and their development."

31. Indigenous observers suggested that this draft article might be reworded for clarity, and so as to apply more broadly to the development of indigenous peoples' own institutions and initiatives.

32. The Chairman/Rapporteur believes that the principle that States provide positive assistance for cultural development, rather than merely tolerating cultural diversity, is an important and necessary one, that is now also reflected in the text, on first reading, of the declaration on the rights of

national, ethnic, linguistic and religious minorities (E/CN.4/1990/41, Annex I). As the object is the promotion of cultural development, moreover, this draft article is quite distinct from draft article 19 below which relates to economic and social development. For reasons of clarity, it is of course possible to replace the words "require that States grant" with "special State measures".

Draft article 8

> "The right to manifest, teach, practise and observe their own religious traditions and ceremonies, and to maintain, protect and have access to sacred sites and burial grounds for these purposes."

33. A government observer expressed concern that the right of access to sacred sites is not made subject to any "reasonable limits", nor does it take account of the possibility that sites may have changed in character.

34. One indigenous observer proposed adding a reference to "the right to obtain, use and preserve articles, implements and natural items needed for ritual and ceremonial practices."

35. The Chairman/Rapporteur notes that this principle is consistent with the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which in article 6 refers to the right to establish and maintain places of worship, and to make, acquire and use the necessary articles and materials related to religious rites or customs. To harmonize this draft article fully with the Declaration, a reference to religious implements could be included in a revised text.

Draft article 9

> "The right to develop and promote their own languages, including an own literary language, and to use them for administrative, juridical, cultural and other purposes."

36. A number of government observers supported the objective of this article, but felt it was far-reaching as regards the use of indigenous languages for official purposes, especially in cases where indigenous languages had no written form. Some suggested that the right to use indigenous languages in judicial proceedings be limited to persons who have difficulty using the official language, while others expressed a preference for wording similar to article 12 of ILO Convention No. 169. One government observer stated that this principle would be incompatible with her national constitution, which recognizes only one official language.

37. Indigenous observers expressed strong support for this article, which they considered crucial for maintaining their identities and cultures.

38. The Chairman/Rapporteur notes that article 28 of ILO Convention No. 169 provides that "Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong", and also that "Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned". The

Convention also refers to the use of "mass communications in the languages of these peoples" (article 30), as well as the use of interpretation in legal proceedings "when necessary" (article 12).

Furthermore, with reference to the relevant language of UNESCO's Convention against Discrimination in Education, the Chairman/Rapporteur agreed that a further discussion may be necessary to reach agreement on this draft article.

Draft article 10

> "The right to all forms of education, including in particular the right of children to have access to education in their own languages, and to establish, structure, conduct and control their own educational systems and institutions."

34. Some government observers indicated that the right to control of indigenous peoples' own educational institutions should be subject to the same limitation as is contained in article 13 of the International Covenant on Economic, Social and Cultural Rights, that is, conformity with minimum State educational standards. With regard to instruction in indigenous languages, one Goverment observer considered that this would be inconsistent with her national constitution, while another assumed that it was not intended to require each and every educational institution in the country to offer instructions in all indigenous languages.

40. At the same time, it was suggested that this principle be strengthened so as to provide for education in indigenous cultural traditions and heritage. There was a further question as to whether the right of access to education should be limited to children.

41. The Chairman/Rapporteur concurs that some of these suggestions would clearly improve the text, in particular, the expansion of access to education to cover all indigenous persons regardless of their age, and the requirement that education respect the traditions and heritage of indigenous peoples.

42. As for the other concerns which were expressed, she assumes that the provisions of the Declaration would be applied flexibly, without requiring anything unreasonable or impossible. Unlike a convention, which must be legally precise, a declaration is usually drafted in very broad terms, leaving room for interpretation according to national conditions. She submits that the words "as far as possible" could be included in this draft article for the sake of clarity.

Draft article 11

> "The right to promote intercultural information and education, recognizing the dignity and diversity of their cultures, and the duty of States to take necessary measures, among other sections of the national community, with the object of eliminating prejudices and of fostering understanding and good relations."

43. A government observer suggested including a reference to the right of access to the mass media in order to create awareness of the problems of indigenous peoples. An indigenous observer suggested that the term "intercultural information" be clarified, and refer to the "history, cultures and institutions of indigenous peoples."

44. The Chairman/Rapporteur believes that these suggestions are useful and unobjectionable in light of similar provisions in articles 30 and 31 of ILO Convention No. 169 and article 17 of the Convention on the Rights of the Child and that they can be reflected in the revised text accordingly.

Draft article 12

> "The right of collective and individual ownership, possession and use of the lands or resources which they have traditionally occupied or used. The lands may only be taken away from them with their free and informed consent as witnessed by a treaty or agreement."

45. Several government observers emphasized the widely differing laws relating to land tenure in many parts of the world. One suggested that this provision might conflict with established laws and practices of a non-discriminatory nature, for example, when lands are nationalized with the free consent of a majority of the population, and maintained that indigenous peoples' land rights must not be used to discriminate against other groups. Another government observer explained that, under her country's constitution, there can only be a single régime for the ownership of property, and resources are generally managed by the State for public benefit. Others noted that their national legal systems treated land and resources differently, or restricted private interests in land to use or possession.

46. Concern was also expressed that this draft article could be used to assert rights to all lands occupied by indigenous peoples in the past. By contrast, ILO Convention No. 169, article 14, secured rights only to lands which indigenous peoples "traditionally occupy", that is, which they continue to occupy today.

47. Indigenous observers generally stressed the collective aspects of land rights, and maintained that this principle should be expanded to include all lands presently occupied or used, including lands to which indigenous people had been relocated in the past, or which have been acquired for development. It was also suggested that the use of land should be protected, even if it co-exists with other uses of the same land by other groups.

48. Participants in the indigenous peoples' preparatory meeting were of the view that this draft article must refer both to "lands" and to "territories". Furthermore, it must apply to all lands to which indigenous peoples are justly entitled even though these lands may not have been "traditionally occupied" in the strict sense of those words, as well as lands which were traditionally "used" whether or not they were "occupied".

49. The Chairman/Rapporteur considers that draft article 15 is one of the most important and complex articles of the draft declaration and notes that this article addresses the question of lands which indigenous peoples had lost

by unjust means in the past. Rights to lands which indigenous peoples themselves had only recently settled, or from which they had only relatively recently been removed poses more difficult questions which merit wider discussion in the Working Group. It is clear, in any case, that this principle must be interpreted flexibly and fairly. Immemorial occupation is not required, only some genuine and legitimate connections with the land in question.

50. The Chairman/Rapporteur also notes that indigenous peoples enjoy a special relationship with their lands, which has been recognized in article 13 of ILO Convention No. 169, and that protection and observance of this special relationship may require legal measures different from those which apply to the national and administrative population as a whole.

Draft article 13

> "The right to recognition of their own land-tenure systems for the protection and promotion of the use, enjoyment and occupancy of the land."

51. One government observer suggested that there could be problems in attempting to transfer indigenous land systems, including concepts of collective ownership, custodianship and inheritance, into a system of legally enforceable rights and obligations in national legal systems, which are based on different concepts.

52. The Chairman/Rapporteur notes that a similar principle appears in ILO Convention No. 169, article 17 (1), and that in some federal States or in States with ethnically-distinct regions, different forms of land tenure exist side-by-side. The problem would appear largely to be one of documenting indigenous land law.

Draft article 14

> "The right to special measures to ensure their ownership and control over surface and substance of resources pertaining to the territories they have traditionally occupied or otherwise used including flora and fauna, waters and ice sea."

53. Many indigenous observers stressed the importance they attach to the use of the term "territories", which implies a common history, language, and way of life, and boundaries within which lay lands and natural resources. They urged that the declaration clearly protect indigenous ancestral and legal ownership and control of both surface and subsurface, renewable and non-renewable resources. One indigenous observer proposed including an explicit reference to "geothermal and other, mineral rights, reef resources and the resources of the ocean crusts".

54. Participants in the indigenous peoples' preparatory meeting were of the view that this draft article must include clearer language to protect indigenous peoples' ownership and control of subsurface resources. Indigenous peoples have an ancestral right under their own traditional legal systems to subsurface resources in the same manner as the surface of the land.

55. The Chairman/Rapporteur underlines that the term "territories" was employed in ILO Convention No. 169, article 13, to suggest the "total environment" used by indigenous peoples, including resources they use on lands occupied for some purposes by others. She also considers it relevant here that the General Assembly, in its resolution 44/228 of 22 December 1989, underscored the interrelatedness of environment and development, and in its 1986 Declaration on the Right to Development (resolution 41/128 of 8 December 1986), emphasized the linkage between development and the realization of human rights. Protecting indigenous peoples' basic human rights, as well as their right to development, may depend on their control of the surface and subsurface resources in the areas in which they live.

Draft article 15

> "The right to reclaim land and surface resources or where this is not possible, to seek just and fair compensation for the same, when the property has been taken away from them without consent, in particular, if such deprival has been based on theories such as those related to discovery, terra nullius, waste lands or idle lands. Compensation, if the parties agree, may take the form of land or resources of quality and legal status at least equal to that of the property previously owned by them."

56. One government observer expressed concern over the requirement of "compensation", suggesting that the development of economic and social support programmes and enhanced self-determination and self-management for indigenous peoples would achieve the same objective.

57. An indigenous observer proposed adding the words "occupation, cession, abandonment" after the word "discovery". In the view of the Chairman/Rapporteur, however, these issues are covered by the present text. A government observer expressed the view that this draft article allows for an extremely broad interpretation, which might be used to incite conflict between national or ethnic groups or between States.

58. The Chairman/Rapporteur believes that a fair and appropriate form of legal recognition of the right to reclaim lands unjustly lost, will guide existing tensions over land rights into constructive channels, rather than create new tensions. It should be kept in mind that the principles of a just and fair compensation and restitution are well established in international human rights law and should as a matter of course be extended to indigenous rights.

Draft article 16

> "The right to protection of their environment and in particular against any action or course of conduct which may result in the destruction, deterioration or pollution of their traditional habitat, land, air, water, sea ice, wildlife or other resources without free and informed consent of the indigenous peoples affected. The right to just and fair compensation for any such action or course of conduct."

59. A government observer noted that States may have limited power to interfere with the actions of private citizens, including citizens of neighbouring States, and may therefore be unable to provide the degree of protection contemplated by this draft article. Another government observer stated that this principle was predicated on the existence of a reserve system, that is, it envisaged indigenous peoples living in separate and distinct areas within a country. The text should take account of other possibilities.

60. An indigenous observed proposed adding the words "negotiate and conclude" in the second sentence, between the words "the right to" and "just and fair compensation". Another indigenous observer proposed adding a reference to "subsurface and submerged ocean resources", while another suggested that this principle include the right to take special measures to ensure the right to development.

61. With regard to the power of States to enforce this principle, the Chairman/Rapporteur notes the growth of national environmental legislation over the past 20 years, and the increasing use of treaties and agreements among States to control transboundary movements of air pollutants and toxic chemicals. It would seem that most States agree that environmental quality should not be left to private choices. She notes that this principle is similar to article 7 (4) of ILO Convention No. 169.

62. The Chairman/Rapporteur also believes that this draft article will be of particular importance to the survival of the people of the globe and in particular of the indigenous peoples, and to the ability of indigenous peoples to pursue their own paths of development. Neither this principle, nor any other provision of the draft declaration, has the aim or effect of restricting indigenous people to separate areas, but some provisions of the draft Declaration will necessarily apply more readily to distinct indigenous settlements or territories than to the places where indigenous people are mixed with others. As elsewhere, a degree of reasonableness and flexibility should be exercised.

Draft article 17

> "The right to require that States consult with indigenous peoples and with both domestic and transnational corporations prior to the commencement of any large-scale projects, particularly natural resource projects or exploitation of mineral and other subsoil resources in order to enhance the projects' benefits and to mitigate any adverse economic, social, environmental and cultural effect. Just and fair compensation shall be provided for any such activity or adverse consequence undertaken."

63. A member of the Working Group suggested that Governments and transnational corporations should consult with and obtain the consent of indigenous peoples before carrying out any projects which might have adverse consequences for them. Reference was made to the Code of Conduct for transnational corporations (TNC), and it was suggested that TNCs should take steps to mitigate the adverse consequences of their activities, including (a) undertaking social and environmental impact studies; (b) taking measures to restore land to its former condition; and (c) respecting sites of religious, cultural or economic importance to indigenous peoples.

64. One government observer suggested that, if this principle applied to projects carried out on lands owned by indigenous peoples, the requirement that States simply "consult" with them seemed too weak. Some indigenous observers suggested that the phrase "seek the consent" would be preferable, while participants in the indigenous peoples' preparatory meeting took the position that the right of "consent" is essential, particularly in relation to large-scale projects, which may frequently involve the destruction of indigenous peoples.

65. One indigenous observer proposed adding the words "to obtain the free and informed consent of" between the words "that States" and "indigenous peoples"; the words "which affect indigenous territories or rights" between "any projects" and "particularly natural resource projects"; and the words "the right to negotiate and conclude" before "just and fair compensation". It was also suggested that this draft article should not be limited to "large-scale" projects.

66. Another indigenous observer proposed rewording this principle as follows:

> "The duty of States to seek and obtain their free and informed consent, through appropriate mechanisms, before undertaking or permitting any programmes for the exploration or exploitation of mineral or other subsoil resources pertaining to their traditional territories. Just and fair compensation should be provided for any such activities undertaken for the duration of such uses and for the fair market value of resources which are exploited, developed, or removed from traditional territories. The duty of the State to restore and rehabilitate the territories which have been utilized by States for mineral resource exploitation and development."

67. The Chairman/Rapporteur clarifies that this principle is similar to article 15 of ILO Convention No. 169, which relates to exploitation of subsurface and other natural resources. The ILO provision employs the term, "seek the consent", therefore no weaker standard should be used in this draft article. An appropriate formula should be sought in the further discussion of this principle in the Working Group.

Draft article 18

> "The right to maintain and develop within their areas of lands or territories their traditional economic structures and ways of life, to be secure in the traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fresh- and salt-water fishing, herding, gathering, lumbering and cultivation, without adverse discrimination. In no case may an indigenous people be deprived of its means of subsistence. The right to just and fair compensation if they have been so deprived."

68. Some government observers felt this provision is unrealistic, in particular with regard to compensation for losses of subsistence, or they objected to the recognition of greater or exclusive subsistence rights for indigenous peoples.

69. One government observer expressed the view that this right should apply to the same lands referred to in draft article 12, that is, to "lands which they traditionally occupy". He suggested that the text be clarified, and that it take into account environmental protection and conservation requirements.

70. Another government observer expressed concern that this provision might be used to restrict an indigenous people's means of subsistence to traditional types of economic activities. It should not limit the extension to them, with their consent, of the economic and social programmes provided to all other population groups in the region.

71. The Chairman/Rapporteur notes that this principle is similar to the one adopted in ILO Convention No. 169 (article 23). The text of the draft article should be revised to make it clear that the geographical scope of this provision is related to draft articles 12 and 13, in other words, to the total environment traditionally occupied or used by these peoples, and over which they enjoy rights of ownership or control.

72. As for the question of environmental protection or conservation, the Chairman/Rapporteur believes this concern is covered by the words "without adverse discrimination". Non-discriminatory measures would be permissible, if necessary to preserve habitats or species. At the same time, the second sentence of this draft article would imply that States should restrict indigenous peoples' activities only as a last resort, when no alternative conservational measures are possible.

73. Lastly, the Chairman/Rapporteur is of the view that this draft article is permissive rather than restrictive in nature - that is, it leaves to the indigenous peoples themselves the choice of traditional or other forms of economic activity. It would in no way limit their right to benefit from progress in science and technology, or to adopt alternative forms of economic life.

Draft article 19

> "The right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent, that reflect their own priorities."

74. One government observer noted that States are unlikely to have limitless resources available to them, and suggested that this draft article be reworded in more realistic terms.

75. The Chairman/Rapporteur takes into consideration this concern, and underscores her belief that this obligation, like the obligations contained in the International Covenant on Economic, Social and Cultural Rights, would be given progressive effect - that is, States would not be required to achieve everything at once, but only to take concrete steps to enhance the enjoyment of these rights, to the extent of their resources.

Draft article 20

"The right to determine, plan and implement all health, housing and other social and economic programmes affecting them, and as far as possible to develop, plan and implement such programmes through their own institutions."

76. One government observer reiterated concerns raised with regard to draft article 19, while another objected to giving indigenous peoples any greater right to influence matters affecting them than is enjoyed by the rest of the national population.

77. The Chairman/Rapporteur notes that this principle is consistent with the provisions of ILO Convention No. 169, which ensure the right of indigenous people to plan and implement programmes in the fields of education, vocational training, and health.

Draft article 21

"The right to participate on an equal footing with all the other citizens and without adverse discrimination in the political, economic and social life of the State and to have their specific character duly reflected in the legal system and in political and socio-economic institutions, including in particular proper regard to and recognition of indigenous laws and customs."

78. One government observer expressed the view that this principle should not prevent members of indigenous peoples from exercising the rights granted to all other citizens, or from bearing the associated duties. Another government observer stated that this principle could not and should not mean the establishment of a separate legal system. However, one representative of a specialized agency referred to the importance of ensuring that indigenous peoples are fully autonomous and in control of their own communities' social, cultural, economic and political life, in addition to enjoying equal opportunities to participate in the life of the country in which they live, to the extent they wish.

79. The Chairman/Rapporteur notes that this draft article includes the fundamental principle of equality and it could also be the basis for recognizing a distinct indigenous legal system within a State, but that such a result is not required. The text refers to a "proper regard" for indigenous laws and customs within the framework of the State legal system and institutions. This implies a certain measure of accommodation, rather than necessarily two independent legal systems.

Draft article 22

"The right to participate fully at the State level, through representatives chosen by themselves, in decision-making about and implementation of all national and international matters which may affect their life and destiny."

80. One government observer construed this to mean that indigenous people should enjoy equal rights with other citizens to elect their own representatives at the national level. Another preferred the expression "observing the principles of equality" to the term "full" participation. An indigenous observer felt that the concept of self-determination is of such overriding importance that it should also be included in this draft article.

81. The Chairman/Rapporteur believes that it is important to ensure that indigenous peoples are not only free to participate in national elections, on the same basis as other citizens, but that they enjoy an effective voice in national and international affairs affecting them. She notes that few States have reserved a small number of seats in their national legislatures, or have designed electoral districts, so that at least some indigenous representation will be maintained. Such measures would be consistent with the aims of this draft article, but not necessarily required by it.

Draft article 23

> "The [collective] right to autonomy in matters relating to their own internal and local affairs, including education, information, culture, religion, health, housing, social welfare, traditional and other economic activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions."

82. Government observers questioned how the right to autonomy can coexist with the laws of the State. One expressed the view that a right to autonomy is incompatible with the political and social organization of his country. Another felt that this draft article envisages a system of separate indigenous reserves, which he considered to be a form of segregation. He suggested that it be limited to instances "where indigenous peoples require protection", and that it be applied "with the full consent of the indigenous peoples and so as not to establish a system of racial segregation". Still another government observer agreed that this principle could not practically be applied where an indigenous people live among the rest of the population without constituting a majority in any area.

83. According to another government observer, it was not clear whether the aim was the establishment of administrative, social, economic and other structures to replace those of the State as a whole, or the establishment of parallel structures. He suggested that the right to autonomy be exercised only "in accordance with established laws and practices". Still another stated that the declaration should make it clear that indigenous rights are to be exercised within the framework of State law, and are not to be interpreted as implying separate development or statehood, or extra-citizenship rights.

84. Further, another government observer expressed the view that autonomy should be regarded as a solution that can be adopted if and when it is in keeping with the specific situation and constitutional framework of the country in question. As a possible alternative to autonomy, provision could be made within the legislation and regulations of the country for indigenous peoples to participate in the organization and management of education, culture, health, social welfare and local economic activities.

85. Several indigenous observers emphasized the great importance to them of the right to self-determination, and recommended that it be included expressly in this draft article. One of them also suggested including a reference to control and jurisdiction over fiscal matters.

86. The Chairman/Rapporteur believes that this principle could apply to geographically distinct indigenous communities, wherever they exist, without prejudice to individuals' freedom of movement or freedom to choose their own residence. Furthermore, she wishes to draw attention to the two possibilities offered by territorial and personal autonomy. She also believes that respect for the right to autonomy does not necessarily mean replacement of the entire State structure, but an accommodation within it, as may be agreed between each State and the indigenous peoples themselves. She points out that such autonomous régimes exist already in many countries.

87. As for the applicability of the right to self-determination, she is of the view that it involves different considerations, and as such merits a thorough and independent discussion. While some indigenous peoples may meet the conventional criteria for enjoyment of the right to self-determination, others may not, and it might be unnecessary as well as inappropriate to restate existing standards in this declaration. It may be preferable simply to ensure that indigenous peoples are not discriminated against with respect to the implementation of existing standards, such as the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.

Draft article 24

> "The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions, and to determine the membership of the indigenous peoples concerned for these purposes."

88. A government observer sought clarification of the use of the term "institutions", explaining that it would be acceptable if it refers to community organizations, but not if it implies separate political institutions. Other government observers expressed the view that this draft article shared some of the problems they had identified in draft article 23.

89. One indigenous observer stated that this draft article did not adequately address the right to determine citizenship, which was the key to the perpetuation of indigenous peoples. He proposed adding the words "the right to determine their own citizenship without external interference."

90. The Chairman/Rapporteur notes that this draft article should deal more clearly with membership in indigenous societies, as was her intention from the outset; accordingly the text could be revised for clarity purposes.

Draft article 25

> "The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms."

91. A government observer expressed concern that this principle could be interpreted as legitimizing legal pluralism, that is, a separate system of laws for indigenous people. Another noted that occasions may arise where the community imposes obligations upon its members which conflict with their civil liberties as citizens of the State. This would be particularly troublesome if they had no choice with regard to their membership in the community. Still another suggested that individual responsibilities should be consistent with their duties and reponsibilities as citizens of their respective countries, and with human rights and fundamental freedoms, in accordance with international conventions to which the particular country had acceded and relevant domestic laws.

92. The Chairman/Rapporteur clarifies that this draft article applies to the internal affairs of indigenous communities, and could not be used to deprive any person of basic human rights, including the right to leave the community, and thereby avoid its laws. The Chairman/Rapporteur also observes that internal rule-making is essential and fundamental to the enjoyment of cultural identity and self-development, and wonders whether there are many States in which no form of local law-making is permitted.

Draft article 26

> "The right to maintain and develop traditional contacts and co-operation, including cultural and social exchanges and trade, with their own kith and kin across State boundaries and the obligation of the State to adopt measures to facilitate such contacts."

93. An indigenous observer expressed the view that the term "kith and kin" is unnecessarily restrictive, and suggested that this right extend to contacts with any other indigenous peoples.

94. The Chairman/Rapporteur notes that this principle appears in article 32 of ILO Convention No. 169, where it does extend to all other indigenous and tribal peoples, and not only to those which are related by kinship. Also, article 3 (3) of the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities (E/CN.4/1990/41, annex I), recognizes the right of minorities to maintain transborder contacts "with other members of their group [and with other minorities]", which is broader than the notion of "kith and kin". Draft article 26 should accordingly be revised for consistency with these other relevant standards.

Draft article 27

> "The right to claim that States honour treaties and other agreements concluded with indigenous peoples."

95. One government observer felt that this draft article was too weak, since it only referred to a right "to claim" that States honour their treaties and agreements with indigenous peoples. It should also include the obligation for the State to establish a mechanism to ensure that treaty commitments are honoured. Another government observer expressed the view that an unrestricted application of this principle would, however, lead to undesirable social and political consequences.

96. Participants in the indigenous peoples' preparatory meeting felt that this draft article must stress the duty of States to respect the "spirit and intent" of the treaties which have been signed, or which will be signed in the future with indigenous peoples.

97. One indigenous observer proposed that this principle be reworded as follows: "The right to have claims pertaining to treaties between indigenous peoples and States heard before an impartial international tribunal." Another suggested that it be rephrased to read: "The right to the observance and enforcement of treaties and other agreements concluded with indigenous peoples."

98. The Chairman/Rapporteur notes that the question of remedies for any breach of these rights, including rights arising under treaties, is addressed in draft article 28. The text should make it clear that what is intended here is a right to the implementation of treaties, however, and not merely the right to make complaints; it could be revised accordingly.

In the opinion of the Chairman/Rapporteur, States and indigenous peoples are free to renegotiate or agree to modify or set aside any treaty or agreement which has, through the passage of time or changed circumstances, become unenforceable or impracticable. This possibility falls within the scope of draft article 28.

Draft article 28

> "The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes and any infringement, public or private, between States and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, arbitration, national courts and international and regional human rights review and complaints mechanisms."

99. One government observer questioned the propriety of applying international mechanisms to disputes between a State and persons or groups living within its borders. Appropriate procedures in such cases may include negotiations or consultations within the constitutional framework of the country in question. Another government observer believed that this draft article would oblige the State to establish separate procedures for the settlement of disputes with indigenous peoples, which would conflict with the principle of equality before the law.

100. The Chairman/Rapporteur notes that international mechanisms already apply to a wide variety of human rights problems arising within States. Likewise, many States themselves have established separate procedures for ensuring the fair settlement of disputes involving special groups such as minorities, families or children. The draft article is flexible and does not require that each and every kind of dispute resolution mechanism be available in each country, but only that there exist mechanisms which are mutually acceptable and fair. The text could be revised for clarity only, to remove any doubt that it applies both to disputes between indigenous peoples and States, and to situations involving infringements of the rights of individuals.

IV. OTHER MATTERS

Definition

101. A government observer stated that from the text as it now stands, it is not clear which criteria were used as a basis for the term "indigenous peoples". It seems to be viewed only in relation to a comparatively small number of ethnic groups which have not been fully integrated into the political and economic structures of existing societies or States. The term "indigenous peoples" could in principle also be applied to all ethnic groups (tribes, nationalities, nations) which have occupied particular territories at an earlier stage than settlers belonging to other ethnic communities that continue to inhabit those territories. The draft declaration should therefore indicate whether the term "indigenous peoples" should be understood broadly or narrowly.

102. Another government observer noted that being classified as "indigenous" could turn out to be a limitation rather than an expansion of a group's rights, for example, its right to self-determination. A clear definition was therefore needed. Still another suggested the use of article 1 of the ILO Convention as a model, while another stated that it was not necessary to define the term "indigenous peoples" in a declaration of this kind. The Chairman/Rapporteur wishes to strongly align herself with the view that a definition is not needed for the purposes of this exercise. She also refers to the working definition contained in the study of the Problem of Discrimination Against Indigenous Populations and in particular of the paragraphs 362-382, Vol. V. She further underlines that it is clear in almost all cases which groups would fall within the scope of the declaration; in the other cases it would be the task of Governments and international supervisory organs to iron out any differences.

Collective character of indigenous rights

103. One government observer expressed his satisfaction that the qualification of certain rights as "collective" had been deleted from the draft declaration. These qualifications, which did not seem to be uniform throughout the entire text, were unnecessary, because whether a right is collective or not is normally implied in its definition. Another government observer stated that the declaration should generally be oriented towards the rights of individuals, although he recognized that some of the rights in question have a collective aspect. Still another took the view that human rights are individual by definition.

104. An indigenous observer maintained that all indigenous rights have both individual and collective aspects. Another stated that it is in the area of collective rights that the declaration will make its greatest contribution, although the individual rights of indigenous people are equally important. According to another, specific references to "individual" or "collective" should be avoided unless the context of a draft article does not permit a broader interpretation. Participants in the indigenous peoples' preparatory

meeting stated that the concpet of collective rights is of paramount importance. Without this, the eclaration could not adequately protect indigenous peoples' most basic interests.

105. The Chairman/Rapporteur agreed that individual rights are of paramount importance for any standard-setting activities of the United Nations in the field of human rights. Nevertheless, she wishes to state clearly that several of the rights promulgated in the draft declaration by their very nature have collective beneficiaries, such as land rights and autonomy. Accordingly, and by necessity, these provisions would have to be so drafted or understood.